



BORA LASKIN LAW LIBRARY

3 1761 03342 7394

WILLS AND ESTATE PLANNING

MATERIALS

ON

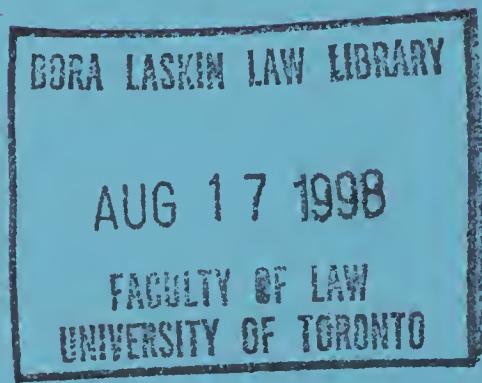
ESTATE PLANNING

1998-99

Compiled by Bonnie Croll

**These materials are not to be considered as published.
They are for the sole educational use of students at the
Faculty of Law, University of Toronto**

Storage



WILLS AND ESTATE PLANNING

MATERIALS

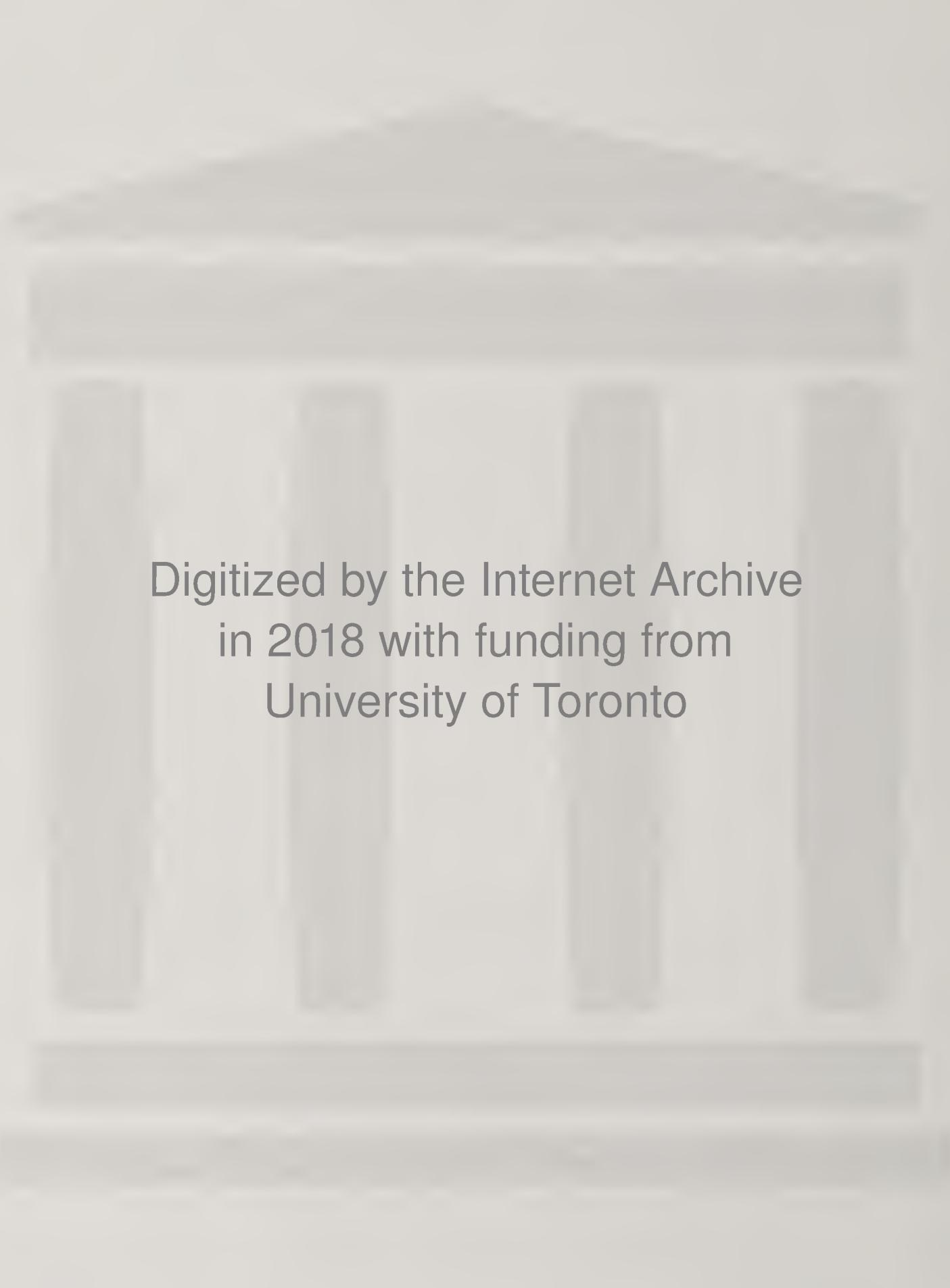
ON

ESTATE PLANNING

1998-99

Compiled by Bonnie Croll

**These materials are not to be considered as published.
They are for the sole educational use of students at the
Faculty of Law, University of Toronto**



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/materialsonestat00crol_4

TABLE OF CONTENTS

CHAPTER 1 - INTRODUCTION.....	1
1. ESTATE PLANNING	1
2. GENERAL OBJECTIVES.....	2
<i>Glossary of Terms</i>	5
Stubart Investments Limited (Appellant) v. Her Majesty The Queen (Respondent).....	6
General Anti-Avoidance Rules Part XVI - s. 245 I.T.A.....	19
CHAPTER 2 - THE POSITION OF THE PERSONAL REPRESENTATIVE	21
Duties of the Personal Representative	21
<i>Trustee Act R.S.O. 1990, Chapter 23</i>	24
<i>Sample Advertisement for Creditors</i>	24
Income Tax Return for Deceased - s. 150(1)(b), (c), (d) I.T.A.	25
Section 150: Returns.....	25
Clearance Certificates - s. 159 I.T.A.....	26
Information Circular 82-6R — Clearance Certificate.....	28
Nicole Bougie and Marc Bougie (Plaintiffs) v. Her Majesty the Queen (Defendant) [1990] 90 D.T.C. 6529.	31
Sharon Boechler, Executrix of the Estate of Alexander , Deceased (Plaintiff) v. Her Majesty the Queen (Defendant) [1991] 2 C.T.C. 168. 91 D.T.C. 5506	34
CHAPTER 3 - INCOME TAX CONSEQUENCES OF DEATH - INCOME	35
Income Inclusions in Terminal Return	35
Separate Returns	36
<i>The Rights or Things Return</i>	36
<i>Other Returns</i>	37
Interpretation Bulletin IT-212R3 - Income Of Deceased Persons —Rights Or Things	37
Income Tax Return in Year of Death - Example for Discussion	40
CHAPTER 4 - INCOME TAX CONSEQUENCES OF DEATH - CAPITAL PROPERTY OWNED AT DEATH.....	41
Capital Property s. 54 I.T.A.....	41
Income or Capital	41
Deemed Disposition of Capital Property at Death s. 70(5) - ITA.....	43
Relief from Deemed Disposition	43
Spousal Rollover - Transfer or Distribution to Spouse or Spouse Trust s.70(6) - ITA	44
Election out of Rollover s. 70(6.2) - ITA	44
Definition of Spouse s. 252(4) - ITA.....	45
Sample Clause Establishing Spouse Trust	45
Winnifred M. Hillis and Irvin Hillis (Appellants) v. Her Majesty The Queen (Respondent). [1983]C.T.C. 348, [1983] D.T.C. 5365 (F.C.A.)	46
Interpretation Bulletin IT-449R - Meaning Of "Vested Indefeasibly"	56
Thelma Arlene Greenwood and Elgin Evan Coutts, Executors and Trustees of the estate of Sidney Greenwood, Deceased (Appellants/Plaintiffs) v. Her Majesty the Queen (Respondent/Defendant) (1990), 39 E.T.R. 276, [1990] 90 D.T.C. 6990, aff'd by Fed. C.A., Dec. 9, 1993, [1994] 94 D.T.C. 6190 (F.C.A.)	59
Meaning of "Indefeasibly Vested" for Purposes of Spousal Rollover	63
CHAPTER 5 - SPOUSE TRUST	66
Income of Spouse Trust.....	66
Income of Trust s.108(3) - ITA	67
No Disqualification of Spousal Trust s.108(4) - ITA	67
Occurrences as a Consequence of Death s. 248(8) -ITA	67
Overview - Transfer As A Consequence Of Death.....	68
Interpretation Bulletin IT-305R4 - Testamentary Spouse	69

CHAPTER 6 - CAPITAL PROPERTY OWNED AT DEATH - OTHER RELIEVING PROVISIONS	73
Principal Residence Exemption	73
Lifetime Capital Gains Exemption	74
Crystallization of Capital Gains Exemption	75
CHAPTER 7 - TAXATION OF ESTATE, TESTAMENTARY TRUST AND BENEFICIARY.....	76
Reference to Trust or Estate - s. 104(1) I.T.A.	76
Thibodeau Family Trust v. The Queen 3 E.T.R. 168, [1978] C.T.C. 539, [1978] 78 D.T.C. 6376	76
Interpretation Bulletin IT-447 - Residence Of A Trust Or Estate.....	83
21 Year rule - Deemed Disposition by Trust s. 104(4) - ITA.....	85
1995 Federal Budget - More Changes!.....	87
Commentary on 1991 changes to extend the 21-year rule.....	88
By Samuel Slutsky.....	88
By Neil Brooks and Linda McQuaig	88
From the Globe and Mail, May 31, 1994	90
CHAPTER 8 - ALLOCATION OF INCOME AND CAPITAL GAINS TO BENEFICIARIES.....	91
Reduction in Computing the Income of the Trust	91
Paid or Payable to Beneficiary.....	91
Benefit Under Trusts s.105(2) - ITA	91
Designation to Retain Income.....	91
Administrative Practice.....	92
William H. Grayson (Appellant) v. The Minister of National Revenue (Respondent). (1990) 1.C.T.C. 2303, [1990] 90 D.T.C. 1108 (TCC)	94
Allocation of Income From Trust	96
Interpretation Bulletin IT-286R2 - Trusts—Amount Payable	96
Distribution of Capital From Trust s.107(2) - ITA	99
Distribution of Principal Residence S.107(2.01) - ITA	100
CHAPTER 9 - "SOME HISTORY" - PREFERRED BENEFICIARY ELECTIONS	102
Clause Establishing Basic Children's Trust	102
PREFERRED BENEFICIARY ELECTION	102
CHAPTER 10 - BASIC WILL PLANNING.....	104
Ross v Caunters (a firm) [1979] 3 All E.R. 580	104
White v. Jones, [1993] 3 All E.R. 481 (C.A.); [1995] 2 W.L.R. 187 (H.L.)	116
Hickson v. Wilhelm Saskatchewan Court of Queen's Bench [1997] S.J. No. 554.....	138
Crowe (Committees of) v. Bollong [1998] B.C.J. No. 771	148
Sample Clause Authorizing Trustees to Allocate Assets between Family Trust and Spousal Trust	152
CHAPTER 11 - POST MORTEM PLANNING.....	153
Disclaimers, Releases or Surrenders by Beneficiaries - s. 248(8) - ITA	153
Saunders v. Vautier (1841), Cr + Ph.240 41 E.R. 482 (Ch)	154
Variation Of Trusts Act, R.S.O. 1990, c.V.I.....	156
Why vary a trust?.....	156
George A. Murphy (Plaintiff) v. Her Majesty The Queen (Defendant) [1980] C.T.C. 386; [1980] 80 D.T.C. 6314 (F.C.T.D.).....	157
CHAPTER 12 - INTER VIVOS PLANNING	165
Uses of Trusts in Estate Planning	165
Income Tax Consequences of Gifts	165
Inadequate Consideration - s.69 I.T.A.....	167
Interpretation Bulletin IT-405 - Inadequate Considerations-Acquisitions And Dispositions.....	167
CHAPTER 13 - INTER VIVOS PLANNING - INCOME SPLITTING	169
Inter Vivos Transfer of Property to Spouse or Spouse Trust - s.73(1) ITA.....	169

Income Splitting and Non Arm's Length Dispositions	170
Joseph B. Dunkelman v. Minister of National Revenue. C.T.C. 375, [1959] 59 D.T.C. 1242.....	172
"Normal" Attribution Rules	177
Attribution of income	177
Transfers and loans to spouse - S.74.1 I.T.A.....	177
Transfers and loans to minors - S.74.1(2) I.T.A.....	177
Attribution of Gains or Losses - S.74.2 I.T.A.....	178
Transfers or Loans to a Trust.....	178
Attribution of Trust Income to Settlor -S.75(2) ITA	180
Interpretation Bulletin IT-369R — Attribution Of Trust Income To Settlor.....	183
Transfers or Loans to a Corporation - S.74.4 ITA.....	185
Her Majesty the Queen (Appellant and Respondent by Cross-Appeal) v. Albert Kieboom (Respondent and Appellant by Cross-Appeal) [1992] 46 E.T.R. 229 (F.C.A.), [1992] 92.D.T.C. 6382	187
The Queen v. Kieboom. 92 DTC 6382 (FCA)	193
Interpretation Bulletin IT-511R- Interspousal and Certain Other Transfers and Loans of Property	193
Indirect Payments S 56(2) I.T.A.....	199
Her Majesty the Queen (Appellant) v Jim A McClurg (Respondent) [1990] 91 D.T.C. 5001	200
The Queen v. Neuman [1990] 91 D.T.C. 5001	211
The Queen v. Neuman	219
Neuman v. Minister of National Revenue, Federal Court of Appeal.....	220
Neuman v. The Queen. [1998] S.C.J. No. 37	232
Non-arm's Length Indebtedness - s.56(4.1) - ITA	238
CHAPTER 14 – PROBATE PLANNING.....	239
Probate Trusts	239
Granovsky v. Ontario [1998] O.J. No. 508.....	241
CHAPTER 15 - ESTATE FREEZING	248
What is an Estate Freeze?	248
Exchange of shares by a Shareholder in Course of Reorganization of Capital. s.86 (1) I.T.A.....	252
Section 86 Estate Freeze.....	252
Transfer of property to corporation by shareholders. s.85 (1)(a),(b),(c) I.T.A.....	255
Section 85 (1) Estate Freeze	255
The Howard Langer Family Trust v. Minister of National Revenue [1992] 1 C.T.C. 2119.....	257
Some Estate Planning Problems for Discussion	261

